THE HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE BILAL NAZKI

WRIT APPEAL No. 2315 of 2005

29-11-2005

Between:

M.Jayakrishna.

..... APPELLANT

AND

Mandal Revenue Officer, Nampally Mandal, Hyderabad District & Another.

.....RESPONDENTS

THE HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE BILAL NAZKI

WRIT APPEAL No. 2315 of 2005

JUDGMENT: (Per Hon'ble Sri G.S.Singhvi, CJ)

Having failed to persuade the learned Single Judge to quash the proceedings initiated by Mandal Revenue Officer, Nampally Mandal under Section 7 of the Land Encroachment Act, 1905 (for short 'the Act'), the appellant has filed this appeal.

It is borne out from the record that the appellant has been litigating since 1991 for protecting his possession over land measuring Ac.6-17 guntas in Survey Nos.17, 18 and 19 correlated to T.S.Nos.9, 8 and 7, Ward No.202, Block-C, Thotaguda village, Nampally Mandal, Hyderabad. Writ Petition No.1409 of 1991 filed by him claiming that the property in dispute belongs to him was dismissed by this Court along with a batch of other similar petitions with the observation that in exercise of jurisdiction under Article 226 of the Constitution, the High Court cannot adjudicate the issue of title. Writ Petition No.22952 of 2005 filed by the appellant against the threatened interference with his peaceful possession of the property, was disposed of by the learned Single Judge on 31.10.2005. The operative part of that order reads as under;

> "This Court in its order dated 31.8.2005 in W.P.No.1409 of 1991 etc., noticed that the petitioner appears to be in possession of the land in Survey Nos.17, 18 and 19. However, this Court declined to go into the question of title, leaving it to the parties to agitate the matter before the appropriate Court. In the counter affidavit filed in this writ petition, at para 5, the allegation made by the petitioner that the respondents tried to interfere with the possession is denied, though it is admitted that the illegal constructions made in T.S.No.23 were removed by the respondents so as to take up NIS and SIS schemes. Be that as it is, now that the MRO issued notice under Section 7 of the Act and the petitioner to file explanation within a period of one week. Thereupon, the Mandal Revenue Officer concerned shall consider the explanation and the material that may be filed by the petitioner, and pass appropriate orders within two weeks thereafter. Till appropriate orders are passed, there shall be status quo as to possession insofar as the land in Survey No.17 (T.S.No.9), Survey No.18 (T.S.No.8) and Survey No.19 (T.S.No.7) of Thotaguda village, Nampally Mandal, Hyderabad."

In terms of observations made in the last mentioned order, the appellant could have filed objections against the notice issued by the

Mandal Revenue Officer and contested the action initiated by the officer concerned for his eviction, but instead of doing that, he straightaway filed Writ Petition No.24560 of 2005, which was dismissed by the learned Single Judge being premature, by recording the following observations:

> "The Writ Petition is not maintainable for two reasons. First, admittedly the impugned communication is a notice and the petitioner has various remedies under the Act. Even if the first respondent proceeds against him under the Act, ordinarily Writ Petition against notice would not be maintainable. Secondly, as held by this Court in the decisions referred to hereinabove, it is not an inflexible and inviolable rule that the Government should always file a suit for declaration of title and recovery of possession and mere longstanding possession does not render the action under the provisions of the Act illegal. It is for the Government to take appropriate action. At the stage of notice, this Court cannot issue a Writ prohibiting revenue officials from taking action in accordance with law. If so advised, the petitioner may file explanation to the impugned notice within a period of one week from the date of receipt of a copy of this order."

We have heard Sri V.Srinivas, learned Counsel for appellant and carefully perused the record.

In our opinion, the reasons given by the learned Single Judge for refusing to entertain the appellant's challenge to the notice, do not suffer from any legal infirmity. In terms of order dated 31.10.2005 passed by the learned Single Judge in Writ Petition No.22952 of 2005, the appellant should have filed objections against the notice issued by the Mandal Revenue Officer under Section 7 of the Act. If the officer concerned had decided the matter against him and ordered his eviction, then the appellant could avail the appropriate legal remedy. In our considered view, the appellant's challenge to the notice was clearly premature and the learned Single Judge rightly refused to entertain the same. Consequently the appeal is dismissed.

At this stage, the learned Counsel for appellant made a request that his client may be granted time to file objections against the notice

issued by the Mandal Revenue Officer under Section 7 of the Act. Though belated, we accept the request of the learned Counsel and grant seven days further time to the appellant for filing objections in response to the notice issued by the Mandal Revenue Officer.

(G.S.SINGHVI, HCJ)

29th November 2005

(BILAL NAZKI, J)

ajr